

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATHAN MARQUIS LEBARON,

Plaintiff,

vs.

KIM M. EATON and MARLA
PASCAL,

Defendants.

NO. CV-09-247-JPH

ORDER ADOPTING REPORT AND
RECOMMENDATION, DISMISSING ACTION,
DENYING APPLICATION TO PROCEED IN
FORMA PAUPERIS, AND DENYING MOTION
FOR INJUNCTIVE RELIEF

BEFORE THE COURT is Plaintiff's timely Objection to the Report and Recommendation to dismiss this action, to deny *in forma pauperis* status, and to deny injunctive relief. Plaintiff, a Massachusetts State prisoner, is proceeding *pro se*; Defendants have not been served. Plaintiff brought this action against two Yakima County Court Clerks who allegedly failed to file his complaint.

Plaintiff contends this court should apply *McCray v. Maryland*, 456 F.2d 1 (4th Cir. 1972) to remove the cloak of absolute quasi-judicial immunity from the named Defendants and to allow Plaintiff to proceed with his claim for damages resulting from Defendant's alleged interference with his right of access. This court, however, is precluded from doing so by intervening U.S. Supreme Court law and

ORDER ADOPTING REPORT AND RECOMMENDATION, DISMISSING ACTION, DENYING APPLICATION TO PROCEED *IN FORMA PAUPERIS*, AND DENYING MOTION FOR INJUNCTIVE RELIEF -- 1

1 Ninth Circuit precedent. See *Danielson v. Williams*, 474 U.S. 327, 328
 2 (1986); *Davidson v. Cannon*, 474 U.S. 344, 347-48 (1986); *Stump v.*
 3 *Sparkman*, 435 U.S. 349, 359 (1978); *Mullis v. United States Bankruptcy*
 4 *Court*, 828 F.2d 1385, 1390, 1394 (9th Cir. 1987), cert. denied, 486
 5 U.S. 1040 (1988); see also *Sharma v. Stevas*, 790 F.2d 1486 (9th Cir.
 6 1986) (clerk of United States Supreme Court has quasi-judicial
 7 immunity); *Morrison v. Jones*, 607 F.2d 1269, 1273 (9th Cir.
 8 1979) (court clerk's "failure . . . to perform a ministerial duty which
 9 was a part of judicial process is also clothed with quasi-judicial
 10 immunity"); *Harmon v. Superior Court*, 329 F.2d 154, 155 (9th Cir.
 11 1964) (recognizing absolute immunity for county clerk and other
 12 judicial personnel).

13 For the reasons set forth above and in the Report and
 14 Recommendation, **IT IS ORDERED** the Report and Recommendation (Ct. Rec.
 15 7) is **ADOPTED in its entirety**. **IT IS ORDERED** this action is **DISMISSED**
 16 **with prejudice** for failure to state a claim upon which relief may be
 17 granted under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2). **IT IS FURTHER**
 18 **ORDERED** the application to proceed *in forma pauperis* is **DENIED** and the
 19 Motion for injunctive relief (Ct. Rec. 4) is **DENIED**.

20 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
 21 prisoner who brings three or more civil actions or appeals which are
 22 dismissed as frivolous or for failure to state a claim will be
 23 precluded from bringing any other civil action or appeal *in forma*
 24 *pauperis* "unless the prisoner is under imminent danger of serious
 25 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read**

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 27 ORDER ADOPTING REPORT AND RECOMMENDATION, DISMISSING ACTION, DENYING
 28 APPLICATION TO PROCEED *IN FORMA PAUPERIS*, AND DENYING MOTION FOR
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1 the new statutory provisions under 28 U.S.C. § 1915. This dismissal
2 of Plaintiff's complaint may count as one of the three dismissals
3 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to
4 file future claims.

5 **IT IS SO ORDERED.** The District Court Executive is directed to
6 enter this Order, forward a copy to Plaintiff at his last known
7 address, enter judgment, and close the file. The District Court
8 Executive is further directed to forward a copy of this Order to the
9 Office of the Attorney General of Washington, Criminal Justice
10 Division.

11 **DATED** this 1st day of September 2009.

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14 S/ Edward F. Shea
EDWARD F. SHEA
UNITED STATES DISTRICT JUDGE
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